

## APPENDIX B: INFORMATION ON PHARMACUETICAL PRICING FROM NON-GOVERNMENT SOURCES

1. This appendix focuses on non-government documents regarding the acquisition cost and reimbursement of pharmaceuticals. Many of the references indicate that the private sector has been exposed to and acted upon information generated in the public sector. For instance, *Drug Topics* refers to Medicaid programs as the “trend-setters” for third party prescription plans<sup>1</sup> and the “leaders” in a game of “follow the leader.”<sup>2</sup> A 1994 *Health Care Financing Review* article commented that Medicaid policy was especially significant, because private payors “often mimic their own States’ Medicaid payment methods for prescription drugs.”<sup>3</sup> In addition, private insurance companies acted as carriers, or local administrators of the Medicare and Medicaid programs, and received regular data and guidance from the federal government concerning reimbursement levels and actual acquisition costs.<sup>4</sup> Further, deponents have testified that their companies used Medicare reimbursement levels as a reimbursement benchmark.<sup>5</sup>
2. Since at least the late 1980s, there have been numerous references to government studies about prescription drug prices in newspaper and journal articles. These articles cite studies and reports from the OIG,<sup>6</sup> the Congressional Budget Office

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<sup>1</sup> Robinson, Bill, “Medicaid at 20: Still Awkward and Troubled,” *Drug Topics*, April 21, 1986, p. 36.

<sup>2</sup> Ehrlich, Frederick J, “Learning To Live With Third Party,” *Drug Topics*, February 17, 1986, p. 38.

<sup>3</sup> Lamphere-Thorpe, Jo Ann, William P. Johnston, Kerry E. Kilpatrick, and G. Joseph Norwood, “Who Cares What it Costs to Dispense a Medicaid Prescription?,” *Health Care Financing Review*, March 22, 1994, p. 9.

<sup>4</sup> OIG, *Changes to the Medicaid Prescription Drug Program Could Save Millions*, A-06-40216, September 1984, p. 3.

<sup>5</sup> See, for example, Beaderstadt (John Deere) Deposition, pp.17-19 and Deposition of Michael T. Mulrey, Manager of Provider Reimbursement in the Actuarial Department, Blue Cross Blue Shield of Massachusetts (“BCBS-MA”), January 5, 2006, pp. 61-63.

<sup>6</sup> Alpert, Bill, “Hooked on Drugs: Why do Insurers Pay Such Outrageous Prices for Pharmaceuticals?” *Barron’s*, June 10, 1996 (“Alpert 1996”), p. 15.

(“CBO”),<sup>7</sup> the New York State Consumer Protection Board,<sup>8</sup> and the Senate Special Committee on Aging.<sup>9</sup> Furthermore, these articles were published in widely-read publications such as the *Los Angeles Times*, *Newsday*, and *The Washington Post*. There was also extensive coverage of Congressional Hearings in 2001 and 2002 and of the debate surrounding the Medicare Modernization Act.

## I. 1980s

3. An article published in the July 5, 1987, *Lexington Herald-Leader* (KY) quoted the director of regulatory affairs for Rugby Laboratories as saying, “The (Average Wholesale Price) is a joke” and quoted a top Pennsylvania Medicaid official as saying that AWP “just doesn’t mean anything. It has no connection to what pharmacists really purchase the drug for.”<sup>10</sup> This article also discussed an audit by the OIG conducted in 1985, stating “It [the audit] concluded that Average Wholesale Prices were, on the average, 16 percent too high.”<sup>11</sup> Later in 1987, *Drug Topics* reported that HCFA had “made clear its position that AWP is generally not a good guidepost in determining pharmacists’ drug costs.”<sup>12</sup>
4. In 1989, *Newsday* noted that “insurers say the average wholesale price isn’t the price they pay for drugs. Depending on the medicine, the acquisition price can be as much as 50 percent less than the average wholesale price.”<sup>13</sup> In the same year, the *Arkansas Democrat-Gazette* published an interview with Bill McCutcheon, a

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<sup>7</sup> Dillon, Michael J., “Drug Pricing: One Size Fits None,” *Journal of Commerce*, August 3, 1994, p. 6A; Enthoven, Alain, “Discounts: A Healthy Dose of Competition,” *The Washington Post*, August 11, 1999 (“Enthoven 1999”), p. A19.

<sup>8</sup> Unger, Michael, “Study Finds Drug Prices Vary Widely: Consumer Board Sees Spread of up to 700%,” *Newsday*, August 28, 1990 (“Unger 1990”), p. 41.

<sup>9</sup> Rosenblatt, Robert A., “Catastrophic Care Would Pay More for Drugs than VA, Study Finds,” *Los Angeles Times*, July 16, 1989, Part 1, p. 16.

<sup>10</sup> Miller, John Winn, “Drug Industry Overcharging Medicaid Prescriptions Cost Taxpayers Millions of Extra Dollars,” *Lexington Herald-Leader*, July 5, 1987 (“Miller 1987”), p. A1.

<sup>11</sup> Referring to OIG, *OIG Use of Average Wholesale Prices in Reimbursing Pharmacies Participating in Medicaid and the Medicare Prescription Drug Program*, October 3, 1989.

<sup>12</sup> Robinson, Bill, “New Medicaid Drug Rules: Reform or Retreat,” *Drug Topics*, September 7, 1987, p. 54.

<sup>13</sup> Sanger, Elizabeth, “No Rx for Plans; Drug Plans Draw Pharmacists’ Ire,” *Newsday* (New York), February 24, 1989, p. 47.

HCFA deputy regional administrator, in which he said that even the publishers of AWP openly admit that AWP “‘doesn't represent the actual cost’ to pharmacies ‘by any stretch of the imagination.’”<sup>14</sup> This article also reported that HCFA had “recently ruled that the average wholesale price [was] no longer an acceptable reimbursement standard.” Another 1989 *Arkansas-Democrat Gazette* article looked at prices for Zantac and found that the AWP was \$63, that pharmacies could purchase it at \$55, hospitals could purchase it at \$53, and the Veterans Administration could purchase it for \$41.<sup>15</sup>

5. In 1989 the *Washington Post* reported that “[t]he generally accepted practice in the industry has been to use ‘the average wholesale price’ – something akin to the ‘blue book’ value of an automobile – as a way to measure the cost of the drug.”<sup>16</sup> This article discussed a study commissioned by Mack Trucks that found pharmacies could buy brand name drugs for AWP minus 15 percent and generic drugs for AWP minus 50 percent.

## II. 1990s

6. Between 1990 and 1993, many newspaper and journal articles discussed pharmaceutical discounts in connection with the Congressional hearings on the Medicaid best-price legislation. Publications such as *Drug Topics*,<sup>17</sup> the *Los Angeles Times*,<sup>18</sup> *The New York Times*,<sup>19</sup> and *The Seattle Times*<sup>20</sup> published articles discussing the varying levels of discounts and rebates received by

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<sup>14</sup> “Pharmacists Face Big Losses Under Proposal, Official Says,” *Arkansas Democrat-Gazette*, March 23, 1989.

<sup>15</sup> Henson, Maria, “Pryor Going after Lower Drug Prices,” *Arkansas Democrat-Gazette*, July 17, 1989.

<sup>16</sup> Sun, Lena H., “Prescription Drug Plans Face Threat; Pharmacy Chains Dropping Programs,” *The Washington Post*, April 14, 1989, p. A1.

<sup>17</sup> Conlan, Michael F., “Now Come Some Serious Medicaid Cuts,” *Drug Topics*, September 17, 1990, p. 45.

<sup>18</sup> Reynolds, Maura, “Medicaid Savings,” *Los Angeles Times*, November 20, 1990, Part A (“Reynolds 1990”), p. 5.

<sup>19</sup> Freudenheim, Milt, “Business and Health; Medicaid Fight by Drug Makers,” *The New York Times*, July 31, 1990, Section D, p. 2.

<sup>20</sup> King, Warren, “Drug Companies Hit Over Price Boosts—Hospitals, Other Health Organizations Report Increases of 20 Percent or More,” *The Seattle Times*, February 17, 1991, p. A1.

different classes of trade and the federal government. These discounts ranged from 10 to 70 percent according to the *Los Angeles Times*;<sup>21</sup> while the *Arkansas Democrat-Gazette* reported that discounts could range from 25 to 60 percent.<sup>22</sup> The *Los Angeles Times* quoted Professor Stephen Schondelmeyer as saying, “Many hospitals get products at 40 to 60% less than what the retail pharmacy pays.”<sup>23</sup>

7. An article published in *Trustee* in 1991 discussed the impact of the Medicaid Best Price legislation on the prices charged to hospital buying groups and mentioned two instances in which hospital purchase prices have skyrocketed: for Yale-New Haven Medical Center, the price of Coumadin went from \$2.10 to \$42.12; the price of warfarin at the University of Wisconsin Hospital and Clinic was raised from \$1.80 to \$36.70.<sup>24</sup>
8. In 1993, publications such as the *Washington Post* began to cover *In re: Brand Name Prescription Drug Litigation*, in which pharmacies complained about pharmaceutical price differentials across different classes of trade.<sup>25</sup> In October 1993, the *Los Angeles Times* reported retail drugstores as saying they paid up to 1,200 percent higher prices for drugs than did health maintenance organizations (“HMOs”), and mail-order pharmacies.<sup>26</sup> The *Chicago Sun-Times* reported that retail pharmacists paid drug prices that were up to 1,245 percent higher than those paid by other classes of trade.<sup>27</sup>

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<sup>21</sup> Reynolds 1990, p. 5.

<sup>22</sup> “Drug Price Surge Hits VA Hospitals,” *Arkansas Democrat-Gazette*, February 24, 1991.

<sup>23</sup> “Drug Firms Start Holding Line on Prices,” *Los Angeles Times*, January 12, 1992, Business, Part D, p. 11.

<sup>24</sup> Chaconas, Judy, “Providers Offer Prescription for Medicaid Drug-Pricing Law,” *Trustee*, December 1991, p. 19.

<sup>25</sup> Mathews, Jay, “Drugstores Accuse Firms of Fixing Drug Prices,” *The Washington Post*, October 15, 1993 (“Mathews 1993”).

<sup>26</sup> Gellene, Denise, “Suit Accuses 7 Drug Makers of Price-Fixing,” *Los Angeles Times*, October 15, 1993, Part D, p. 1.

<sup>27</sup> Mathews, Jay, “Chains Accuse Drug Firms of Price-Fixing,” *Chicago-Sun Times*, October 15, 1993, p. 6.

9. In 1996, *The New York Times* reported that HMOs received discounts and rebates from drug manufacturers by “contending they can push tens of thousands of patients toward one or another brand, or often a low-priced generic copy, at the expense of similar drugs.”<sup>28</sup> The *Chicago Tribune* reported that managed-care organizations, mail-order pharmacies, hospitals, and nursing homes could purchase drugs at prices 40 to 95 percent lower than the prices available to retail pharmacies.<sup>29</sup> Also in 1996, the *Washington Post* reported that AWP is a “price that is used as a baseline to negotiate prices and reimbursement rates.”<sup>30</sup>
10. In 1996, staff at *Barron’s* performed an analysis of pricing for the “top 20 Medicare drugs (which account for about 75% of the program’s drug spending), as well as for various intravenous solutions.”<sup>31</sup> They followed a methodology similar to that employed in the OIG studies discussed in Exhibit C, comparing AWP’s listed in the *Red Book* and the *Blue Book* with “current quotes or price lists from several leading wholesaler[s] specializing in sales to doctors, home health firms, nursing homes and hospitals.”<sup>32</sup> They found that “for generic drugs, nearly every manufacturer’s price was 60%-85% below the published average wholesale price” and that for intravenous nutritionals and solutions, “[c]atalog wholesale prices ... are, on average, 80%-93% below those companies’ AWP’s,” concluding, “If most health-care providers can get these prices, is it any wonder an industry wag says that AWP really means ‘Ain’t What’s Paid?’.”<sup>33</sup>
11. A January 1997 article in *The Washington Post* said AWP is “not ... the price that’s really charged [to] most customers.”<sup>34</sup> Also in January 1997, an article in

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<sup>28</sup> Freudenheim, Milt, “The New Drug-Price Squeeze; H.M.O.’s are Fighting Back in the Battle over Costs,” *The New York Times*, March 13, 1996, Section D, p. 1.

<sup>29</sup> Hutchcraft, Chuck, “Drug Suit Prescription has Pharmacists Queasy; Some Fear Settlement Won’t Cure Sales Ills,” *The Chicago Tribune*, February 19, 1996, Business, p. 1.

<sup>30</sup> Day, Kathleen, “A Bitter Pill to Swallow; Small Pharmacies a Dying Breed as Profit Margins Shrink; Druggists’ Dilemma,” *The Washington Post*, February 26, 1996, p. F01.

<sup>31</sup> Alpert 1996, p. 15. They noted that the OIG was also investigating pricing for these drugs.

<sup>32</sup> Alpert 1996, p. 15.

<sup>33</sup> Alpert 1996, p. 15.

<sup>34</sup> Rich, Spencer, “Battling the High Prices Medicare Pays for Drugs,” *The Washington Post*, January 2, 1997, Section A, p. A15.

*The Pink Sheet* stated, “Pharmacists would receive Medicare reimbursement at the actual or estimated cost of outpatient drugs rather than average wholesale price under language expected to be included in President Clinton’s budget for fiscal year 1998.”<sup>35</sup> A week later, *The Pink Sheet* reported on an OIG audit of state Medicaid payment rates, which found that AWP overstated pharmacy acquisition costs by 18.3 percent for brand-name drugs and by 42.4 percent for generic drugs.<sup>36</sup>

12. In a 1997 radio address, President Clinton referred to AWP as “the so-called sticker price” for drugs and said, “Few doctors, however, actually pay the full sticker price.”<sup>37</sup>
13. One article published in *Cancer Economics* in March 1997 discussed the Administration’s budget proposal to reduce reimbursement to 80 percent of physicians’ actual acquisition cost, stating “If adopted, the proposal would eliminate a major source of revenue for oncologists and, according to many observers, may lead physicians to administer chemotherapy in the hospitals, thereby actually increasing healthcare costs.”<sup>38</sup> Another article in the same issue quoted the chief medical officer at United HealthCare Corp. as saying in a speech to the National Cancer Centers Network, “The markups for chemotherapy medicines are getting to be so high that the public is beginning to react. You are losing credibility from that. What you will see happening in my company and, I suspect, others, is that you will no longer be getting reimbursed at (Average

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<sup>35</sup> “Medicare Coverage of Outpatient Dialysis, Transplant and Cancer Drugs Would Be Tied to Actual Cost Rather than AWP Under Language Expected in Clinton ’98 Budget,” *The Pink Sheet*, January 6, 1997, p. 5.

<sup>36</sup> “AWP Overstates Actual Pharmacy Invoice Cost for Brand Name Drugs by Average of 18.3% Nationwide, HHS IG Concludes; Generic AWP Overstates Cost by 42.5%,” *The Pink Sheet*, January 13, 1997, p. 7.

<sup>37</sup> “Clinton Wants Stricter Curbs on Doctor Charges for Drugs,” *Chicago Tribune*, December 14, 1997, p. 5.

<sup>38</sup> “Administration Proposes Cut Of Markup On Outpatient Drugs,” *Cancer Economics*, a Supplement to the *Cancer Letter*, March 1997, p. 1.

Wholesale Price). You will be getting reimbursed at catalogue prices.”<sup>39</sup> He was also quoted as saying, “Employers are already bringing this up to me. ‘What are you doing about oncologists who are making too much money on drugs?’”<sup>40</sup>

### III. 2000 TO THE PRESENT

14. A 2000 *New York Times* article quotes Patricia Wilson, a pharmaceutical consultant, as saying “[t]hey [AWPs] are not an average, not wholesale and not a price, other than what employers pay.”<sup>41</sup> A June 2000 *Drug Topics* article noted, “Shaughnessy [Product Manager for *Red Book*] likened AWP to a sticker price on a new car. ‘No one actually really pays that price,’ he said. ‘There are various market conditions that go into the price of a product.’”<sup>42</sup> In May 2000, an article in *USA Today* discussed the letters that House Commerce Committee Chairman Tom Bliley sent to “at least seven drugmakers [asking them to] explain how they set prices for certain products covered by Medicare and Medicaid.”<sup>43</sup> The article mentioned the “new drug price-reporting effort,” saying, “Under the new effort ... [t]he difference in price could be stunning. In Florida, for example, the reimbursement for a liter of dextrose dropped from \$13 to \$3.88, and for Ativan, an injectable sedative, the reimbursement went from about \$93 to \$48.”
15. A second 2000 *New York Times* article quoted U.S. Secretary of Health and Human Services, Donna Shalala, as saying that Medicare was paying “far more than doctors pay for many of the medicines.”<sup>44</sup> According to this article, a 1997 HHS study found that “Medicare payments for 22 drugs, including many cancer drugs, exceeded the actual wholesale prices by 29 percent, or \$447 million, in

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<sup>39</sup> “Insurers are Eliminating Markup On Cancer Drugs, Official Says,” *Cancer Economics*, a Supplement to the *Cancer Letter*, March 1997, p. 3.

<sup>40</sup> *Ibid.*, p. 1.

<sup>41</sup> Freudenheim, Milt, “New Questions on Drug Plans as Costs Soar,” *The New York Times*, May 7, 2000, Section 1, p. 1.

<sup>42</sup> Conlan, Michael F, “AWP under Fire Again at Federal and State Levels,” *Drug Topics*, June 5, 2000, p. 48.

<sup>43</sup> Appleby, Julie, “House Committee Asks Drug Firms To Justify Pricing Policy,” *USA Today*, May 10, 2000, p. 1B.

<sup>44</sup> Pear, Robert, “Administration Plans Cuts in Some Drug Payments,” *The New York Times*, Section 1, August 6, 2000, p. 12.



1996. For 8 of the 22 drugs, it said, Medicare paid more than twice the actual wholesale price.” *The Wall Street Journal* reported on an “18-month investigation into drug-industry pricing practices by the House Commerce Committee,” stating “[f]or example, according to a wholesale catalog, health-care providers in June could buy 15 units of Pharmacia Corp.’s cancer drug Bleomycin for about \$140. But Medicare reimbursements were set at 95% of the announced price of \$309.98. That meant doctors buying Bleomycin could make about \$154 on each purchase.”<sup>45</sup> The article also stated, “Drug companies argue that the government has long known that announced prices for these drugs ... represented a ‘sticker price,’ not the actual cost to doctors. After relying on AWP to set Medicare and Medicaid reimbursements for years, the government can’t honestly claim to have been bilked, the companies say.”
16. In late 2000, *Pharmaceutical Executive* reported that the House Commerce Committee had found that TAP and other pharmaceutical companies had been publishing AWP’s that were much higher than acquisition costs.<sup>46</sup>
17. In 2001, an article in *Formulary* stated that AWP “does not represent the true transaction cost.”<sup>47</sup> Numerous articles describing the Congressional hearings on Medicare reimbursement in September 2001 were published. *USA Today* also reported Deputy Inspector General Grob’s written testimony and quoted him as saying, “Until the system is changed, Medicare ... will continue to pay excessive amounts for prescription drugs.”<sup>48</sup> *The Boston Globe* reported on the upcoming hearing, stating, “Authorities in Massachusetts and across the nation are not waiting for Congress to act. Government sources said prosecutors at the US

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<sup>45</sup> Cloud, David S. and Laurie McGinley, “How Drug Makers Influence Medicare Reimbursements to Doctors,” *The Wall Street Journal*, September 27, 2000.

<sup>46</sup> Brichacek, Andra, “Medicare Manipulation: Government Looks The Other Way As Physicians Line Their Pockets With Taxpayer Money,” *Pharmaceutical Executive*, November 1, 2000, p. 170.

<sup>47</sup> Malone, Daniel C., Sean D. Sullivan, David L. Veenstra, Edward P. Armstrong and Amy J. Grizzle, “Determining Unit Cost Values for Health Care Resources in Pharmacoeconomic Studies,” *Formulary*, April 1, 2001, p. 294.

<sup>48</sup> Appleby, Julie, “Feds To Ask Today For Medicare Drug Change,” *USA Today*, September 21, 2001 (quotation shortened in original).



- attorney's office in Boston and the Massachusetts attorney general's office are investigating whether at least 20 pharmaceutical companies committed fraud by manipulating the prices of drugs reimbursed through Medicare and Medicaid."<sup>49</sup> *The Seattle Times*' report on the hearings discussed the excessive Medicare reimbursement, but also quoted Larry Norton, president of the American Society of Clinical Oncology ("ASCO"), as saying, "The cost of supplies, equipment, and nurse time for a chemotherapy infusion significantly exceeds the Medicare payment amount. Medicare pays less than one-fourth of the total costs."<sup>50</sup>
18. On December 20, 2001, *PR Newswire* covered the filing of a lawsuit by the Prescription Access Litigation ("PAL") project against "28 U.S. drug companies for manipulating the 'average wholesale price' of drugs covered by Medicare."<sup>51</sup> *Business Wire* covered the filing of a suit by Steve Berman, acting as "special assistant attorney general for the state of Nevada," alleging that "drug companies engaged in deceptive trade practices by manipulating or misstating the average wholesale price..."<sup>52</sup> In February 2002, *American Health Line* covered the filing of a suit by the attorney general of Montana alleging that 18 drug companies "illegally misstated the average wholesale prices of their medications...."<sup>53</sup>
19. An article in the January 21, 2002, issue of *Drug Store News* discussed both a study by the OIG that "... concluded that retail pharmacies pay an average of nearly 22 percent below average wholesale prices for the drugs they obtain" and a study performed by the Center for Pharmacoeconomic Studies at the University of

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<sup>49</sup> Dembner, Alice, "Medicare Waste Raises Cost of Drugs by \$1B: Congress to Hear Report on Overpayment Excess," *The Boston Globe*, September 21, 2001, p. A2.

<sup>50</sup> "Medicare Drug Pricing Faces Congressional Fix; Many HMOs Trimming Their Program Coverage," *The Seattle Times*, September 22, 2001, p. A10.

<sup>51</sup> "Consumer Groups Charge Industry-Wide Price Manipulation—Over \$800 Million in Illegal Profits from Medicare & Medicare Patients; Federal Lawsuit Charges 28 Drug Companies with RICO, State and Federal Anti-Trust, and Consumer Protection Violations," *PR Newswire*, Boston, December 20, 2001.

<sup>52</sup> "Hagens Berman Assists Nevada in Charging Drug Companies with Fraudulent Pricing Schemes," *Business Wire*, January 25, 2002.

<sup>53</sup> "Montana: Accuses 18 Drug Makers of Price Manipulation," *American Health Line*, February 26, 2002.

- Texas that disputed the OIG's findings.<sup>54</sup> An article in *The Metropolitan Corporate Counsel* in March 2002 stated, "Indeed, for several decades, the federal government has been aware that the Medicare and Medicaid programs have been reimbursing for certain drugs at prices higher than their actual acquisition cost to private parties, physicians and others."<sup>55</sup>
20. A 2002 article in the *St. Petersburg Times* said that oncologists generally receive large discounts off AWP, so that Medicare reimbursement rates at or close to 100 percent of AWP exceeded the cost of the drug to the physician.<sup>56</sup> In 2002, Asela Cuervo, general counsel for the American Association for Homecare, was quoted as saying "[i]t's no surprise to anybody that the AWP contains a large spread from the actual acquisition price."<sup>57</sup> The article also said, "Even its defenders agree that AWP is 'wholesale' in name only, and that, for many drugs, it sets reimbursement levels far above the prices that providers typically pay."
21. The February 13, 2003, edition of *The New York Times* carried an article on lawsuits that New York State Attorney General Spitzer intended to file against two major pharmaceutical companies and mentioned that six other states had filed similar suits, including California and Texas.<sup>58</sup> The article gave information on markups for Taxotere (19 percent), Camptosar (19 percent), Kytril (34 percent), and Anzemet (79 percent). These filings were also discussed in a number of newspaper articles published on February 14, 2003, including the *Philadelphia Inquirer* and *Newsday*.<sup>59</sup>

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<sup>54</sup> Frederick, James, "Federal Drug Price Data Flawed, Charges University Of Texas Study," *Drug Store News*, Vol. 24, No. 1, January 21, 2002, p. 10.

<sup>55</sup> Sanzo, Kathleen M. and Stephen Paul Mahinka, "Pharmaceutical Pricing: System Changes and Global Effects," *The Metropolitan Corporate Counsel*, March 2002, p. 24.

<sup>56</sup> "Medicare Markup For Drugs: 10,000%," *St. Petersburg Times* (Florida), July 14, 2002, p. 1A.

<sup>57</sup> Gray, Tom, "Construction Ahead," *HomeCare*, October 2002, p. 10.

<sup>58</sup> Abelson, Reed, and Jonathan D. Glater, "New York Will Sue 2 Big Drug Makers on Doctor Discount," *The New York Times*, Sections A, February 13, 2003, p. 1.

<sup>59</sup> Pugh, Tony, "N.Y. sues Glaxo and Pharmacia over Drug Prices," *Philadelphia Inquirer*, Business, February 14, 2003; Marshall, Randi F., "Spitzer Sues Drug Makers," *Newsday*, February 14, 2003, p. A08.

22. A Health Policy Report entitled, “Medicare and Drug Pricing” was published in the April 17, 2003, issue of the *New England Journal of Medicine*. According to the article, “The challenge facing policymakers is to strike a balance between the overpayments for drugs and the underpayments for practice expenses that will satisfy the disparate stakeholders.”<sup>60</sup> The report also pointed out that the first administrative action by CMS after October 2002 testimony by the Administrator of CMS was the announcement of a “‘single drug pricer’ to eliminate the variation in prices paid by its local carriers according to how they apply the current payment method.”<sup>61</sup>
23. In August 2003, *The New York Times* quoted “the administration” as saying, “Doctors typically pay 66 percent to 87 percent of the average wholesale price.”<sup>62</sup> An August 2003 *Saint Paul Pioneer Press* article quoted Warrick’s spokesperson, Bill O'Donnell, as saying “The point is, it has been well-known and widely reported since the 1960s that average wholesale price does not reflect actual prices.”<sup>63</sup> According to an article in the *Lexington Herald Leader*, the Kentucky attorney general sued five drug companies, using prices for albuterol as an example: AWP is \$21.41, retail price is ca. \$17, and cost to pharmacy is \$3.75; “a difference of over 570 percent.”<sup>64</sup>
24. An article in the September 29, 2003, *Times-Picayune* reported on the reaction of oncologists to proposed legislation that would reduce reimbursement for drugs. The article said that doctors paid between 13 and 34 percent less than AWP and cited U.S. Representative Billy Tauzin as saying, “... the difference between what some doctors paid and what they were reimbursed by the government was vast.

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<sup>60</sup> Iglehart, John K., “Medicare and Drug Pricing,” Health Policy Report, *New England Journal of Medicine*, April 17, 2003, p. 1590.

<sup>61</sup> *Ibid.*, p. 1593.

<sup>62</sup> Pear, Robert, “Cancer Drugs Face Funds Cut in a Bush Plan,” *The New York Times*, Section A, August 6, 2003, p. 1.

<sup>63</sup> Hanners, David, “Drug Price Boost Alleged,” *Saint Paul Pioneer Press*, Business, August 28, 2003, p. 1C. Warrick is the generic drug subsidiary of Schering-Plough.

<sup>64</sup> Brammer, Jack, “Drug Makers Cheated State, Lawsuit Says,” *Lexington Herald Leader*, City and Region, September 16, 2003, p. B1.

Sometimes the discounts are much deeper ...”<sup>65</sup> The article also cited ASCO “estimates [that] Medicare covers about 25 percent of the clinical, administrative and labor costs associated with administering chemotherapy drugs.” On October 29, 2003, *Drug Industry Daily* reported that CMS would delay its issuance of a final rule on drug reimbursement for Medicare Part B drugs, because CMS wants “... to give Congress the opportunity to act.”<sup>66</sup> Another article on the same subject appeared in the November 5, 2003 issue of *Generic Line*.<sup>67</sup>

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<sup>65</sup> Walsh, Bill, “Medicare law provision would trim drug profits,” *Times-Picayune*, September 29, 2003, p. 4.

<sup>66</sup> “CMS Delaying Final Rule as Congress Debates AWP,” *Drug Industry Daily*, October 29, 2003.

<sup>67</sup> “AWP Methodology Final Rule Delayed by Medicare Debate,” *Generic Line*, Vol. 20, No. 21, November 5, 2003.